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**5. Appeal and Error (§ 1175 (3)\*)—Appellate Court Held Authorized to Enter Judgment, Dismissing Action.**—Where on appeal from a judgment against a buyer of cattle it appeared that the seller had breached the contract in not delivering or tendering the quantity called for, and hence was not entitled to recover, the Supreme Court, in reversing the judgment, might, by virtue of Code 1919, § 6565, enter judgment of dismissal in favor of the buyer.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476.]

Error to Circuit Court, Madison County.

Action by T. S. Hoffman against A. N. Johnson and James H. Fletcher. There was a judgment against defendant A. N. Johnson, and he brings error. Reversed and dismissed.

*W. M. Fletcher*, of Sperryville, and *Edwin H. Gibson* and *Grimley & Miller*, all of Culpeper, for plaintiff in error.

*Jno. S. Chapman*, of Stanardsville, and *N. G. Payne*, of Madison, for defendant in error.

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TAYLOR *v.* BINSWANGER & CO. et al.

June 29, 1921.

[107 S. E. 649.]

**Master and Servant (§ 375 (2)\*)—Injury While Going to Lunch Held Not Compensable.**—Under Workmen's Compensation Act, § 2, cl. (d), providing for compensation for accidental injuries arising out of and in the course of the employment, an employee cannot recover for injuries by being struck by an automobile while riding his bicycle on his way home to lunch during the noon hour.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 694.]

Certified Question from Industrial Commission.

Proceeding under the Workmen's Compensation Act to recover compensation for injuries by Alvin Taylor, employee, opposed by Binswanger & Co., employer. Certified question by Industrial Commission. Question answered.

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AMERICAN PEANUT CORPORATION *v.*  
NEWSOM SUPPLY CO. et al.

June 16, 1921.

[107 S. E. 650.]

**1. Sales (§ 398\*)—Instruction as to Shipment of Defective Peanuts Held Erroneous under the Evidence.**—In an action by a buyer to re-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.